

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON EDUCATION

Call to Order: By **CHAIRMAN GAY ANN MASOLO**, on January 10, 2001
at 3:00 P.M., in Room 137B3:00 Capitol.

ROLL CALL

Members Present:

Rep. Gay Ann Masolo, Chairman (R)
Rep. Kathleen Galvin-Halcro, Vice Chairman (D)
Rep. Bob Lawson, Vice Chairman (R)
Rep. Joan Andersen (R)
Rep. Norma Bixby (D)
Rep. Gary Branae (D)
Rep. Nancy Fritz (D)
Rep. Verdell Jackson (R)
Rep. Hal Jacobson (D)
Rep. Larry Lehman (R)
Rep. Jeff Mangan (D)
Rep. John Musgrove (D)
Rep. Alan Olson (R)
Rep. Ken Peterson (R)
Rep. Butch Waddill (R)
Rep. Allan Walters (R)
Rep. Merlin Wolery (R)

Members Excused: Rep. Joe McKenney (R)

Members Absent: None.

Staff Present: Connie Erickson, Legislative Branch
Nina Roatch, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 134, 1/04/2001
HB 160, 1/04/2001
HB 161, 1/04/2001

HEARING ON HB 161

Sponsor: REPRESENTATIVE MICHELLE LEE

**Proponents: Bob Runkel, OPI
Jude Oberst, Children
Jim McDonald, Great Divide Coop**

**Opponents: Lance Melton, MSBA
David Puyear, MREA**

Informational: Loren Frasier SAM

Opening Statement by Sponsor:

(Tape : 1; Side : A; Approx. Time Counter : 3:03)

REPRESENTATIVE LEE, HD 26 Livingston, stated this bill is at the request of the office of **OPI**. This bill is about giving local school districts certain choices on what label to use when determining eligibility for special education. This bill is about giving local schools certain options. Any school that is concerned that exercising this option would not be in the best interest of the district could simply elect not to do it. Children are often still growing and changing rapidly enough through age 9 and it is sometimes difficult to be certain the child has a particular disability condition. Current law allows the schools to wait until the child is in kindergarten or first grade before a specific disability has to be determined in order for the student to continue to receive help in special education. Sometimes at age five it is very difficult to differentiate between various disability conditions such as emotional disturbance, learning disability, etc. Waiting until age nine, gives districts some leeway before being required to make this very difficult choice.

Bob Runkel, Director of Special Education, OPI, The intent of this bill is to allow schools to have certain choices. There are very few things in federal special education law where there are any choices. Most of the time schools are directed under a very complex set of regulations to do things in certain ways. There are provisions in the federal law, however, that do allow some options and in order to exercise those options each state must first determine whether they want to give schools those options. In this case this bill accomplishes providing choices for schools in two areas. One is the way in which we label children. What is proposed in this bill is to take what we currently have and extend the option for children to be labeled, instead of by a particular disability such as an emotion disturbance, cognizant delay, orthopedic impairment, to simply identify the kid as a

child with a disability. That's the way it is now in current law through age 5. What's purposed in this bill is to extend that age to age 9. The second area of this bill is to establish a category of developmental delay. Sometimes when you are working with young children it is quite difficult to know exactly what might be the disability category for the child. It's sometimes easier to look at his progress in his development. How quickly is he developing communication skills, physical and motor skills, and social skills. Based on that judgement one can conclude whether there is a pretty strong likelihood the student might have troubles educationally. What this bill does is adopt a new category of developmental delay. That category, if adopted, is expected to have an affect on increasing potentially the numbers of kids with disabilities in Montana. That, of course, could potentially have a fiscal impact on schools that make the choice of adopting a category of developmental delay. In order to give schools the choice, the Montana Legislature first has to recognize that it wants to give schools the choice. So passage of this bill is necessary before any local school could decide it wants to serve children with a developmental delay. If **HB 161** is passed, each local school would be able to exercise it's option. People have expressed frustration that special education is often built on a system that identifies a child too late. We identify kids eligibility often by significant school failure. That puts the kid so far behind the curve that it is difficult for him to ever catch up. If you adopt this bill and a particular local school adopts this bill, hopefully what will happen is there will be earlier intervention and kids won't have to wait quite so long before they get the kind of help they need. That's the motivation behind the bill. **EXHIBIT (edh07a01)** This written testimony is presented as information, because although the advisory panel says the State Office of Public Instruction has a big heart in these matters, they are concerned about special education and opening up any more services to any more children. That concern boils down to money and how much there is available to serve our children, There is a concern about school transfers. If a child gets services in one school and moves to another school there is a concern that the receiving school, if they don't offer the same services, might be put at odds with the parents immediately. That is a problem and there isn't any way around it. If you give local schools choices and they provide different services between them, that is inevitable. We turn to you for your judgement whether local decision making is the right avenue.

Jude Oberst. For the last 12 years the witness has served seven years on the **State Special Advisory Council** and two years on the **State Funding Commission**. There are costs involved in **HB 161** and issues that will be problematic administratively and for

parents, but there are higher costs and greater equities in not approving this legislation. How we identify, teach and treat children with disabilities has evolved significantly in the past 20 years, and thus improved the quality of life and improved the quality of the education system. I want to talk to you about why this legislation is philosophically the right thing to do, how providing services based on educational needs, rather than fitting students into categories, is, in fact, the essence of early intervention as well as the next logical step in the evolution of special ed services. I know these are grandiose and perhaps naive ideas in light of the opposition you are likely to hear based on money but that doesn't make it any less true. I don't dismiss the reality of the cost and fairness issues but there is already variability in the quality of and range of services from school to school and district to district. These students are real. The diversity of their learning needs is real. They are in the class room today and they will be in the class room a year from now. Saying we don't have the resources or comfort level to open the door to make them eligible for services flies in the face of all the educational community and what society has learned about the importance of early intervention. **HB 161** gives schools the mechanism to more accurately document the current educational needs of children in the class rooms. Only then will they be able to document the actual cost of providing services and understand the staff's strengths and weaknesses and then be able to help plan in-service training that will prepare teachers to teach the diverse range of learners in the class room. We throw around phrases like outcome based education and data driven decisions. **HB 161** is a significant step in accomplishing both of those goals. When I spoke to the **Appropriations Committee** two years ago in support of an increase in funding for special education my point then is the same I make today, a child's entire window of opportunity for learning can be lost, lost, when a school district denies services and juggles budget priorities. We owe it to all children to open the window of opportunity **.EXHIBIT (edh07a02)**

Opponents' Testimony:

Lance Melton, Executive Director of MSBA I have had a hard time determining whether to rise as a proponent, instructional, or opponent witness. I think there are a couple of changes in the bill that could be made that would change my mind. Right now anything you look at in special education issues, I would hope that you look at real carefully. To put this in context, the federal government one day is striving toward funding 40% of the costs they mandate. Right now we are at about 17%, maybe 2 or 3 percentage points one direction or the other. The bottom line is if they ever do reach their goal, we'll be 60% short of the

mandates that we have under the federal law and they are not anywhere near there yet, so whenever we see a bill dealing with special education issues we do take a careful look at it. There are a couple of problems in here that can be addressed very easily. If you look at Section 1 of the bill, Sub-section 4A, we heard testimony from the proponents that this would be by voluntary choice of the district and in fact when you read this as a lay person it certainly appears that is the case, that it's voluntary. I don't see it spelled out clearly in Sub-section 4A. If you look at the amendment from the age 5 to 9 I would ask where does it say a child who is 9 years or younger may be identified as a child with a disability. By whom? I would hope that we could have an amendment that would answer that question clearly by saying by voluntary choice of the district. We heard proponents talk about how this would be voluntary choice of the district and I would hope to put an exclamation point on that point in order to ensure that is the case. If you look at Sub-section B in the first line, a child 3 through 9 years of age who at the discretion of, sounds innocuous but in legal circles they have all sorts of different litigations and law suits over whether or not someone has abused their discretion. From the testimony I heard from the proponents, it is consistent with the amendments I am proposing here. This should be by voluntary willing choice of the district, no strings attached, no, did they exercise good judgment or not. I would suggest striking the language at the discretion and inserting by voluntary choice. I know that sounds much like what you already heard from the proponents. If that language was inserted, then **MSBA** would be a proponent of this bill. I hope that you will find my testimony throughout the session on all bills offering school districts options and responsibilities something I will come here and support.

David Puyear, MREA An increased amount of the general fund dollars has been going towards special education expenses. That's a given. We have accepted that and try to do the very best we can in our rural school districts across the state to make things work and reach that commitment. Recently more and more every year, increased general fund dollars have been going toward special education as that contribution from the federal government has diminished over time. So this bill that's before you is a real concern of ours. The need is understood. I do not want to diminish the importance of identifying those children. The fact is, as **Mr. Runkel** noted in his testimony, increased numbers of children, he said, could be expected to be identified in this process and we are concerned about that. It's not that those kids won't be served. We have policies and procedures in our schools to identify those kids. Those kids will continue to be identified when they are 6 or 7, 10, 14, or

17 years old, all the way through school. Those procedures are currently in place. Our concern is simply bumping this non-categorized limit up to nine years of age and putting us in that limbo when we already have significant general fund dollars going in those directions. Those are our concerns. The special education procedures in our schools are long standing, we're committed to them, they take a tremendous amount of time and effort of educators across the state and that will continue without this measure.

Questions from Committee Members and Responses:

REPRESENTATIVE MANGAN had a question for **REPRESENTATIVE LEE**. You've heard the concerns of the opponents and the suggested amendments to those two sections. If I was to draft amendments similar to what they said would you consider them friendly amendment? Would you support them. **REPRESENTATIVE LEE** said the amendments would be supported. **REPRESENTATIVE MANGAN** asked the same question of **Mr. Melton**. His answer was affirmative. He would support the bill with the amendments.

REPRESENTATIVE WADDILL had a question for **REPRESENTATIVE LEE**. Are there any costs that you see associated with passing this legislation? **REPRESENTATIVE LEE** said the fiscal note received said there were no fiscal impacts to the state.

REPRESENTATIVE LEHMAN directed a question to **Mr. Melton**. You indicate that you would support this bill as amended. I have a concern that even if the terminology regarding voluntary choice to the school district was put into this bill, would it not still be possible for parents to take legal action against the school district? The school district and local board of trustees may not want to make the decision to include these children and through court action be forced to do that. **Mr Melton** replied. I use to be General Counsel for my association. As General Counsel, the answer I gave school districts when they asked if there was any chance they could be sued was, only if the sun comes out tomorrow. I do think yes. Certainly this an area where there is a lot of litigation. My primary concern is the word discretion. Tha is what troubles me. You can lose a case based on discretion. Someone can sue, but if it says by voluntary choice, that language, there would be a very strong claim that the person should be identified under the non-categorical option and the case thrown out. It would cost time, money and energy to fight it. I do believe changing the language as recommended would make the district no more susceptible to a law suit than they already are under the present law.

REPRESENTATIVE ANDERSEN directed a question to **Mr. Melton**. It was stated there is no anticipated fiscal cost of the state's general fund. Would there be a fiscal cost to a local school district's general fund? **Mr. Melton** replied there is no question that there would be a cost if the district chose to identify someone under the non-categorical option who could not prove that he was entitled to classification under a specific disability. If the school district willingly said, looks like this child has trouble, we're not sure what's up, but in order to hedge our bet, so to speak, we'll do the non-categorical option. Absolutely, there would be a cost to the district. The way I reconcile that is, if the language, by voluntary choice, is there, it will be a choice of the district to undergo that cost. Absolutely, under this legislation I could see increased cost to the school district.

REPRESENTATIVE OLSON question **Mr. Melton**. If the child is labeled developmentally delayed in one district and transfers to another district, will the new district be required to follow through with this label? **Mr. Melton** asked permission for **Mr Runkel** to answer the question. It is not easy when you work out the devils in the details. If you notice, it has a delayed effective date. We've given ourselves a year to study what administrative rules, if any, would be necessary to help us avoid those kinds of circumstances. For the legislative record, it would be our intent to make clear that if a child was identified as developmentally delayed in one district and moved to the new district, the new district would not be obligated to serve that child because of the developmental delay. For the record you need to know that the likely outcome of that move would be that the parent would probably ask for an evaluation for the disability categories that are under the federal law. In all frankness to you, we'll develop administrative rules. These rules should make it clear that the only district obligated to provide those services to the children of developmental delay is districts who by voluntary choice have elected to adopt that definition. If the child moves and the receiving district had not identified that as a category they would service, they would not be responsible to serve. That would be our intent. Still the parent might seek identification of one of the other disabling conditions and if the child qualified under those conditions, the district would be obligated to serve the child.

REPRESENTATIVE JACKSON directed a question to **Mr. Puyear**. I want to clarify a statement you made. You said this bill bumps up these students to a non-category for nine years. Is that correct? **Mr Puyear** said it would increase the area from age 5 to age 9. **REPRESENTATIVE JACKSON** asked if **Mr Puyear** had said that the special education program is taking care of these students

now. **Mr. Puyear** said we have a very good special education program in our schools now. It's a great program. There is a full procedure in the schools right now for the children to be identified. Our concern is the fact that the number of general fund dollars is limited. That's what you folks are telling us. My frustration is for the rural schools when they ask, where do we draw the line for special education when we already have a procedure where the kids are going to be identified. The children will still be identified. I believe in the system we have. **REPRESENTATIVE JACKSON** directed a question to **Mr. Runkel**. In reading the bill **REPRESENTATIVE JACKSON** did not see it specified what services and what equipment we might be talking about in this particular category. **Mr. Runkel** answered. Once the child is eligible for special education he is entitled to all the services the child needs to have an appropriate education. Because the child was identified as developmentally delayed doesn't diminish the responsibility the district has in serving the child. The developmental delay designation is just as significant in the kid's life as the diagnosis of emotional disturbance. The school is responsible once the child is in the door of eligibility. Then what services and equipment the child needs are based on the child's needs and not the disability. We couldn't in anyway suggest that we offer less than what the child needs, merely because the diagnosis is a developmental delay. **REPRESENTATIVE JACKSON** asked if he would define appropriate education. **Mr. Runkel** replied: I believe I can do this in an analogy. The process of evaluating a child and looking at his progress in school, helps professionals decide what the child's needs are. If you go through the step by step process that there is in special education, where professionals evaluate the needs of the child, look at the progress the child has made, get together with one another and the parents and then decide what the child needs. That is what is appropriate. The definition of appropriate is basically the joint coming together of professionals and the parents and they decide what the child needs and they decide what it is going to take for the child to be successful in school. It is specific to the individual student. **REPRESENTATIVE JACKSON** inquired of **Mr. Runkel**, would this conflict with the mandate to mainstream in education. Would you explain where main streaming is and how this would fit in with it. **Mr. Runkel** said this bill would not affect anything with regard to main streaming or including children with disabilities in general education programs where it is appropriate. What has happened over the past 10 years or so is, people have moved away from the term mainstream, mainly because it was thought of in this way - it was thought the child was in special education and you were looking for opportunities in general education where the child might be successful. The thinking over the last 10 years has changed somewhat. The

thinking is that the child belongs in general education and that's where you start. Then you try to decide if the child would not be successful with support services in special education. Then it is time to remove the child. So rather than main streaming back into general education, the assumption is that the child is in general education until proven otherwise. The proving otherwise is judgement calls by professionals that the needs of the child are greater than what can be provided in the general education environment.

REPRESENTATIVE GALVIN-HALCRO asked **Mr. Runkel** if there will be individual education plans written for these students if this legislation passes? **Mr. Runkel**, yes, the individualized educational plans will be required for the children who would be identified under the provisions of this bill. **REPRESENTATIVE GALVIN-HALCRO** continued. If a student transfer from a district that has opted to cover themselves with this legislation and transfers to a district that has not opted for this program, will these students be covered by a 504? Would you explain a 504 to the committee. **Mr. Runkel** Children with disabilities are covered or protected under two key federal laws. The first is The Individual's Disability Education Act, the second is Section 504, The Rehabilitation Act. Section 504 is basically a civil rights law that says that if the child has a disability that affects a major life function such as learning it is the responsibility of the school to provide intervention or services for the child. What will happen is that when a child moves to another district that doesn't serve a child with a developmental delay the probability is that the parent may request a 504 evaluation to determine if the child has a disabling condition that affects a major life function such as learning. If he does, then the child would be entitled to services in special education under Section 504. That is a possibility. **REPRESENTATIVE GALVIN-HALCRO** continued. If a IEP, or an Individual Education Plan is written, please explain how frequently that is reviewed. **Mr. Runkel** said the IEP is reviewed at least once a year. So once a year a school has to get together with the parents of the child and decide what is pre-appropriate public education that I talked about earlier. If there is a reason to think that the plan that was in place is inappropriate, they will need to meet more often than that. **REPRESENTATIVE GALVIN-HALCRO** continued. If a parent agrees to have their child evaluated for any type of special needs, how long can that process take? **Mr. Runkel** The state and federal specifications do not specify a specific date, however, when we monitor schools for compliance, we shall investigate rather thoroughly circumstances where children are not evaluated within 60 days. We expect some fairly quick turn around.

REPRESENTATIVE GALVIN-HALCRO questioned **Mr. Melton** Can you give us a broad brush overview of federal funding for students with disability? You said right now it is at about 17%, where they want to get themselves to 40% contributions. **Mr. Melton** replied, that the federal government when it initially passed this law had the premise that they were going to shoulder the burden for 40% of the excess costs associated with these federal mandates. Now some would say that with or without the federal law, you have a constitutional issue. The children have a constitutional right of education. Some of what went on there was, they were looking at the fact that these kids were entitled to the education on a constitutional basis so they defined it by federal law and they funded it. Now they've under funded it for several years even when you read in the press recently about dramatic increases in federal funding for education. There is a tremendous shortage of funding in special education. This legislature funded special education last session and it did so appropriately. It was the first time in a decade that the state had increased funding for special education. So you have a 20%, best case scenario, funding by the federal government and you have a static amount of funding from the state government for special education over the last decade, with the exception of the last session, and combined together what you have are school districts receiving funds for the extensible purpose of general education for everybody, funneling that money over to cover special education costs.

REPRESENTATIVE GALVIN-HALCRO referred back to **Mr. Runkel**. In your professional opinion do you think a school district might pay a little bit closer attention to a student's needs if that student was to come to their district with a Individual Educational Plan rather than, a common just walk off the street student. **Mr Runkel** said yes. If the child comes with information that would suggest the child likely has education needs, I would expect the receiving school district would pay a great deal of attention to that.

REPESENTATIVE LEHMAN questioned **Mr. Runkel** on a point of clarification. Am I understanding this correctly, Section 504 is a federal guide line that would over ride any state rules and regulations? **Mr. Runkel** answered, yes, that is a federal civil rights statute that if not followed jeopardizes all federal funding for the entity that receives that money.

Closing by Sponsor:

REPRESENTATIVE LEE. Special education programs rely heavily on the federal law and it is very infrequent that we have a chance to give flexibility and choice to local schools and this

is one of those chances that we have to give that flexibility and options to schools. I urge you to pass **HB161**.

HEARING ON HB 134

Sponsor: REPRESENTATIVE FACEY, HD 67, Missoula

Proponents: Spencer Sartorius, OPI

Jody Messinger, OPI

Jim McDonald, Great Divide Coop

Ailene Parisot, OCHE

Loran Frazier, SAM

David Strong, Individual Tech. Field

Inga Nelson, MEA-MFT

Opponents: Dave Puyear, MREA

Informational: Kay Unger, University of Montana

Lance Melton, MSBA

Bob Vogel, MSBA

REPRESENTATIVE FACEY **HB 134, Missoula**, said the bill was brought to him by **OPI**. The bill deals with how an appropriation, the house will be asked to make in a couple of weeks, will be distributed among the industrial, technology, industrial arts, career and vocation teachers in the state. A committee of eleven teachers met this summer and recommended the changes in this bill. They represented ag education, business marketing education, consumer science, and industrial arts education. Previously to this, the driving force in dividing up the funds for career vocational education was enrollment, the number of ANB. Please look at page 12 of the bill, Section 10, line 16, we crossed out "into one of five weighted categories based upon" that is basically where the formula was set and the formula was then set in rule and the money was divided up according to a rule. This bill puts the formula in statute. Look at page 12, line 17 - 22. There is the formula, the meat of it is lines 19 - 22. Appropriation for this biennium is \$715,000. The appropriation that will be dealing with it in the next biennium is not in this bill. It will be in **HB 2**. This is not a money bill. This bill just deals with the formula for diving the money. I do have two small amendments that are offered by **OPUSES** and **The Board of Regents**. On line 21, page 12, part C it says "K-12 career and vocational/technical education experience supervision"; to make that clear to you, what that is, is many of our ag instructors have summer work experience beyond the school year where the student has a project in the field so it would be summer work a teacher gets paid to do. **EXHIBIT (edh07a03)**

Spencer Sartorius, OPUSES, HB 134 primarily deals with two issues. These issues were identified and changes reflect the work of the task force representing K-12 vocational and technical programs at the local level. First to change is the terminology for K-12 vocational education to K-12 career and vocational/technical education. The terminology of career and vocational/technical education has been adopted at the national, state, and local levels including the **OPUSES**. The thinking is that the term vocational education brings to mind an old concept of education leading to a blue collar low paying job, while in fact, today's students are prepared for challenging, high paying technical jobs. This language merely provides for consistency and continuity. Second, it simplifies and makes the method of distribution of career and vocational funds more equitable. While the current formula distributes funds on the basis of the number of students in a school, the new one would base it on the number of students actually enrolled in vocational and technical programs. While the current method provides funding for student associations, the new method would weight that funding on the actual number of students participating. Finally the new formula would take into consideration whether or not a district provided additional supervisory field experience in the summer and an amount of the district vocational/technical expenditures made by the district. We believe the modification in current language will update and improve the funding formula in career and vocational/technical education.

David Strong He served as a member of the above mentioned task force. The task force looked at the old formula and tried to make it more equitable in it's new form. The force conferred with teachers all over the state involved in the already mentioned programs. Those teachers and the force unanimously support the bill.

Arlene Parisot, OCHE is to be commended for taking this leap forward to enhance the image of vocational/technical education. The U.S. Department of Education is looking at making similar national changes. I would hope that they take their lead from Montana.

Bob Vogel, MSBA, The organization represented rises in support of the bill. Anytime we can bring educators from across the state in a particular area together to agree on a new approach in education that better serves the students, **MSBA** sees that as a good thing. **Mr Vogel** said he had been asked by **Lynda Brannon** from **MASBO** to voice her support for the bill also. She was unable to attend the hearing.

(Tape : 1; Side : B; Approx. Time Counter : 4:00)

Loran Frazier, SAM His organization rises in support of the bill.

Inga Nelson, MEA-MFT, The organization represented, rises in support of the bill.

Opponents: None

Questions from Committee Members and Responses:

REPRESENTATIVE WOLERY questioned **Mr. Saritorius**. The bill is about a new funding formula. Who are the winners and who are the losers? **Mr. Saritorius** said at this point in time they can't be identified. As with any issues in funding, there will be some winners and some losers. If you are speaking in terms of particular programs, my guess is that some ag programs could lose some funding while others gain. What the committee did was realize that, in effect, none of the programs were adequately funded and all were looking at how to use the dollars in the most responsible way. What you have in the bill is a compromise that may take money from some and give it to others. It places the needs of the field and school district as a high priority. I do not believe the winners and losers have been identified.

REPRESENTATIVE JACKSON questioned **Mr. Saritorius**. Please fill us in a little bit on a broader picture. One, are we talking about federal or state money? Second, are we talking about K-12?

Mr. Saritorius referred the question to **Jody Messinger** the **Division Administrator for the Office of Public Institution for Adult Career and Technical Division**. The bill is dealing with secondary only and it is dealing with state general fund dollars.

REPRESENTATIVE JACKSON asked that she go through the funding formula the way it is now and the way you propose it to be. The formula we use now and the one we will use, you won't find in this bill, she said. The one we use now is outdated. We no longer collect information from district clerks needed to calculate it. This is a clean up bill. It use to deal with ANB. That part we could still get. But it wasn't representative of the money needed by the district but was representative of the nature of the district. Some districts have real strong vocational programs and some don't. So we decided, as a group, to tie the funding to the actual enrollment in the vocational program. **REPRESENTATIVE JACKSON** said it seems you're attempting to change the image of the program by changing the name. I am wondering if the funding formula is concentrating on the high tech. Please give us a summary of what we are including. I know in some states Industrial Arts is not included. **Jody Messinger** replied: This is a part of how we fund programs. The first thing that happens, is a program is approved. We've been

working hard to tighten up our standards. So a program is either approved or not, based on criteria of what we hope is excellent. Once you are approved, there use to be different weights for different programs. If it is an approved program we need to fund it according to the number of kids served. That's why there are winners and losers and it isn't based on any one program that wins or loses across the state. **REPRESENTATIVE JACKSON** questioned further. I don't know how much money you are receiving from Carl Perkins Act but I know it can't be spent on degree programs so most of it is spent on K-12. I know that a match is required and maintenance effort in the documenting that you do. This may be important down the road. You can do things to lose that money or a portion of it. The maintenance comes from the local level, replied **Judy Messinger**.

Closing by Sponsor:

REPRESENTATIVE FACEY said that **Connie Erickson** has prepared two friendly amendments. On page 3, line 25, following the word "systems," strike the word or and insert a comma. On page 3, line 26 following the word "college," strike the comma and insert or tribal college. We are going to change the formula. We are going to put the formula into statute. Currently ag education gets the majority of the money now, under the new formula, they anticipate ag education will still get their share. The old formula was based on the number of kids in a program. The new formula is driven by each individual school system's formula.

HEARING ON HB 160

Sponsor: **REPRESENTATIVE ANDERSEN, HD 23, Fromberg**

Proponents: **Bob Runkel**
 Ron Laferriere, MCASE
 Loran Frasier, SAM
 Bob Vogel, MSBA
 Jim McDonald, Great Divide Coop
 Inga Nelson, MEA-MFT

Opening Statement by Sponsor:

REPRESENTATIVE ANDERSEN said she presented **HB160** which would revise the special education funding formula by establishing fixed proportions in the distribution of state funds for block grants, reimbursements for disproportionate costs and special education cooperative funding. Of the approximately \$34,000,000 in state appropriations for special education, 52.5% will be distributed through instructional block grants, 17.5% will be distributed through related services block grants, 25% will be

distributed through reimbursements to districts and 5% will be distributed to special education cooperates. The bill would eliminate a complex pro rate calculation procedure when special education allowable costs exceed appropriations and replacing the pro rate procedure with a formula that distributes funds based directly on appropriations. There is a technical amendment for this bill that I will have when we are ready to discuss it.

Bob Runkel, Director of Special Education, OPI, EXHIBIT (edh07a04)

The document passed out is essential to understanding what the bill is trying to accomplish. There are basically three major ways we distribute the \$34,000,000 that the legislature gives us for special education. About 70% of that money goes to block grants in related services such as occupational therapy, speech therapy, etc. and instructional grants for teachers and aids. The second of the three areas is reimbursements for disproportionate costs. Reimbursement for disproportionate costs is intended for those districts, that for whatever reason, have costs that are significantly higher than the rest of the state's school average cost providing special education. It was intended as kind of a relief valve. The third part is to help off-set some the costs of special education cooperatives. Since the primary way that money is distributed to schools is through block grants, and that's distributed to schools based on enrollment, the higher costs of getting services such as speech therapists and occupational therapists out to rural areas is covered in the funding formula and that it provides about 5% of state appropriations to help coops cover wind chill time of these people getting to our rural schools. The problem that we are trying to fix is the present formula has a nasty habit of moving money over into reimbursement for disproportionate costs. That money is coming at the expense of block grant. This has caused significant problems in schools and for special education coops. The purpose of the bill is to stop this switch over to that one part of the funding formula that is drawing the money now, which is reimbursement at the cost of the block grant. Over the course of years since 1996 the amount of the appropriation that's distributed to schools in the form of disproportionate costs has grown steadily to the point it has almost doubled what it was when the formula was put into place. It has gone from about four million dollars to about eight million dollars. The number of schools receiving this money has grown from 147 to 346. Although the original intent was to direct this reimbursement money to those really needy schools who had expenditures significantly above what the rest of the schools were having to cover in costs for special ed. The reality that we now have is that the vast majority of our schools are collecting reimbursement for disproportionate costs and it has lost it's primary purpose. Over all, in the span of years, we've gone from an instruction block grant rate of about \$123 down to an instruction block

grant rate of about \$117. Keep in mind that Federal Fiscal Year 2001 also includes the increase in appropriation that special education had from the prior legislative session. So we still see a dollar figure per child less than what was provided in 1996. That money has gone into that four million dollars that was necessary under the current formula to fund reimbursement. Next you will see that the related services block grant has even had a more dramatic affect in it's change, maybe not so much in dollars as in percentages. You can see that related services block grant has gone from a little over \$43, almost \$44, to a little over \$35. What this bill will do is the following: Number one, it will help make special education funding more predictable. The present funding formula results in a system that kind of interplays the amount of block grant money with the amount of reimbursement money that a district has and they have an interactive affect and that's why you see this variability now and what this will do is make funding much more predictable. You'll be able to know your block grant rate almost directly off the appropriations. It will be much more stable from year to year. The next provision is reducing complexity. If this bill is passed, the process of determining the block grant rate will simply be taking the percentages that were described by

REPRESENTATIVE ANDERSEN in her opening remarks, those precise percentages and applying those to the appropriation. And when it's applied to the appropriation you'll know how much money you'll have for the instructional block grant and you'll know how much money you'll have for the related services block grant and since they're distributed on enrollment, ANB, you can simply divide the statewide ANB by a known figure and you'll be able say when you discuss this in the legislature, X number of additional dollars for special ed will translate into so many dollars per ANB in your district. It will be simpler. It will stop this bleeding of block grant money into reimbursement by the very fact that it fixes the proportions and finally it will stop the decline of the revenue that those districts in most need of reimbursement are experiencing. The current funding formula has resulted in lower and lower percentages of money going to schools who are the most needy schools. What this will do is guarantee that the districts that spend above a particular thresh hold of expenditures will receive no less than 40% of the excess costs, the costs they have above that critical percentage.

Ron Laferriere, MCASE, Director for Special Education for a small coop in Galatin County, Spoke in support of the bill. He said they were not asking for more money, only that the legislature reconstruct the way state funds are distributed. He wants the money distributed more equably and more predictably. As a coop director, I see schools in Montana struggling to meet the fiscal demands of special education largely due to excessive federal mandates imposed upon us especially in rural Montana in one room

schools houses and limited budgets. Because of the reimbursement problem that **Mr. Vogel** articulated, there's been a gradual yet significant decline in the state block grant allocations for many districts and coops. Cooperatives have been especially hit hard because they rely largely on related services block grant. A lot of rural schools have been especially hard hit. We see the problems that have been placed before you. The other problem is that left unchanged, this will continue. More and more money will go to reimbursements and less and less money will be available for the block grant. Personnel from large districts, small districts, and coops have met three times this past year and discussed the intent of this bill and were unanimous in their approval of this concept, each time they met.

Loran Frazier, SAM, said the testimony received thus far, is correct. The formula needs to be redone. **SAM** rises in total support of this bill.

Bob Vogel, MBA, strongly supports this will. **Mr. Vogel** said he had been asked by **Linda Branden** from **MASBA** to voice her support for this bill, in her absence.

Steve Johnson, District Clerk for Baseman School District, served on the committee for the present bill. We have heard what the bill will do, but what it won't do, is provide more funding for schools. We do support the bill.

Inga Nelson, MEA-MET, stands in support of the bill.

Opponents: None

Questions from Committee Members and Responses:

REPRESENTATIVE JACKSON questioned **Mr. Runkel**. If I understand the formula, presently the money is distributed on the basis of the number of students enrolled. The block grant, does that apply to all three areas in the amount of fund or is it just for proportion? **Mr. Runkel** replied, the distribution of the block grant is based on ANB. The other provisions are based on other factors. Reimbursements is based on expenditure rates and the amount of money that is distributed to coops, the 5%, is a combination of factors, one of which is ANB. **REPRESENTATIVE JACKSON** said it was hard for him to get a perspective on how the new formula is an improvement over the old one, If it does simplify it, I would be for it, he said. My question is, according to the special education regulations do we lose any accountability for how the money is spent? **Mr. Runkel** replied, I do not believe there would be any loss in accountability. The

provisions of this bill are just the procedures in the formula that we use to distribute the fund. There are very complete procedures in schools to follow in reporting their expenditures, and how they spend their federal, state and local dollars. This bill would not change that requirement.

REPRESENTATIVE OLSON for **Mr. Runkel**, Explain how this will affect the special education for coops, pleas. **Mr. Runkel** said the comparison of the new proposal is much more favorable to rural special education coops. The reason that is true is because the coops do not receive reimbursements for disproportionate costs. It is only school districts that receive those reimbursements. If the money is going over into a category that they are not eligible to receive, the coop is hurt each time that happens and what this bill will do is block in, pretty much at the status quo, the share of money that is available from the block grant and in doing that it helps protect the futures of the coop because the concern that was mentioned earlier is, oh so true, that this is a trend. This isn't just a one time event. If we do nothing, it is safe to assume that related services block grant will continue to decline significantly and it is the only state general fund revenue source for coops.

REPRESENTATIVE WOLERY for **Mr. Runkel**. If a coop is never going to come out advantageous how about any small school that is not a member of a coop? **Mr. Runkel** said they will be treated as they are treated now. It will fix the money they receive in the block grant also. So they won't be experiencing their decline in the block grant. Where it helps coops is that their only revenue source for state general fund money is the related services block grant. What happens in rural schools who are not members of a coop is, they are the ones that receive the related services block grant. The way the formula works now is if you are a member of a coop, the coop gets the block grant. If the school is not a member of a coop they are the ones that receive the related services block grant. So by protecting the related services block grant and the instructional block grant, rural schools will be just as much of a winner as the coop.

REPRESENTATIVE MANGAN for **Mr. Runkel**. Would you explain the meaning of lines 4, 5, and 6 on page 5. **Mr. Runkel** said that is the area where we will seek a technical amendment. The language that we used did not fulfill all the wonderful committee work that you have heard about today. The way it is written, looks like we are going to rank schools. The proposed amendment will ask that the way the reimbursements for disproportionate costs will be calculated will be based on a percentage amount above the fund of the district's block grant plus the required district's match. What we are proposing is that the calculation procedure

be based on the actual expenditures of all districts above that thresh hold. **REPRESENTATIVE MANGAN** asked **Mr. Runkel** about looking forward a couple of years and putting figures and percentages in a bill makes people want to change them. Do you see these numbers staying the same? **Mr. Runkel** said, over the years there have been switches in the amount of money that is spent in some categories like instructional services, verses related services. There is that danger, but I don't have a better solution to help the problem. The special education system has been in operation for 25 years now. It has matured. It can't be predicted, but I think it is going to be pretty stable.

Closing by Sponsor:

REPRESENTATIVE ANDERSEN The panel is in total support of the bill and the changes it will make in special education funding. The requested formula will simplify and stabilize the way we fund special education. It will give it predictability

EXECUTIVE ACTION ON HB 32

REPRESENTATIVE LAWSON I have some amendments that I need to purpose for **HB 32** that briefly would lower the age by a year. My only concern, and we can go at the pleasure of the committee, is I asked for a new fiscal note based on those amendments but I couldn't get it for this meeting. We can take action today on the bill, knowing it is not going to be more than the \$601,000 or we can wait until Friday.

REPRESENTATIVE MANGAN, I would like to discuss the merits of the bill without the amendments. Maybe we should wait until Friday when we have all the information.

No action taken.

ADJOURNMENT

Adjournment: 4:55 p. m.

REP. GAY ANN MASOLO, Chairman

NINA ROATCH, Secretary

GM/NR

EXHIBIT (edh07aad)